IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
SECOND APPEAL NO. 248 OF 1991

Shri. Vasant Maruti Koli, Since
deceased through his heirs and
legal representatives:

1. Smt. Krishnabai Vasantrao Koli
age 49, Occ: household work

2. Gajanan Vasantrao Koli,
age 35, Occupation: Driver

3. Rajaram Vasantrao Koli,
age 28, Occ: Service

4. Subhash Vasantrao Koli,
age 25, Occ: Labourer

5. Dilip Vasantrao Koli,
age 20, Occ: Labourer

6. Suresh Vasantrao Koli
age 19, Occ: Education

7. Vishwas Vasantrao Koli,
age 18, Occ: Education

8. Sou. Babytai Raosaheb Koli,
age 29, Occ: household

9. Sou. Chhayatai Ashok Suryavanshi
age 25, Occ: household

All residing at Hatkanangale,
Mangure Galli,
Dist: Kolhapur.

..Appellants
(Heirs of Org.
Defendant)

Vs.

1. Hasan Badsha Mujawar
age 44, Truck Driver
residing at Hatkanangale
Dist: Kolhapur.

2. Mubaraq Badsha Mujawar
age 36, Occ: Service,
R/o as above.

3. Abubakar Badsha Mujawar
age 33, Driver,
R/o as above. ..Respondents
(Org.Plffs.)

Mr.V.S.Gokhale with Mr.R.S.Apte h/f. Mr.B.P. Apte for appellant.

Mr.S.M.Kable with Mr.K.V.Saste for Resp.Nos.1 to 3.

CORAM: B.H.MARLAPALLE,J.

December 19 & 20, 2005.

ORAL JUDGMENT

1. This Second Appeal arises from the decree passed by the learned Civil Judge Junior Division at Ichalkaranji in Regular Civil Suit No.266 of 1981 on 22/2/1985 and confirmed by the learned 5th Additional District Judge at Kolhapur vide his judgment and order dated 13/12/1990 in Regular Civil Appeal No.127 of 1985. While admitting the appeal the following substantial questions of law came to be framed:

(a) Whether the claim of the defendant for title based on adverse possession could be negatived solely on the ground that his name was recorded as Bhogawatedar only in the year 1972, by discarding the registered sale deed (Exhibit 46) dated 10th April

1961?

(b) Whether the Courts below erred in law in ignoring the voluminous documentary evidence produced by the appellant in the form of Exhibit 33 which shows the name of the defendant as the owner of the suit property for the years 1967-68 to 1971-72, notices at Exhibits 34 and 36 to 39, dated 20/12/1963, 20/12/1965, 21/8/1971, 6/12/1969 and 23/7/1979 respectively issued in the name of the appellant as the owner of the suit property?

2. The present respondents were the plaintiffs in Regular Civil Suit No.266 of 1981 and they had prayed for possession along with the mesne profits of the suit property viz. residential premises admeasuring 40.2 sq.meters located in City Survey No.198 and village Pancayat No.530. The plaintiffs stated that the appellant-defendant was occupying the adjacent house located in City Survey No.197 and Village Panchayat No.531. Both these houses had a common village panchayat number 355 earlier when it was owned by Shri Gori Allibhai Mujawar, the great grandfather of the plaintiffs. The suit property was inherited by Shri Rehman Gori Mujawar, the

grandfather of the plaintiffs. Rehman had a second wife by name Biyamma, who was widow of Babaji Mullani. Mohammad was the son born to Biyamma from late Babaji Mullani before her marriage with Rehman, the grandfather of the plaintiffs. As a child Mohammad, son of Babaji Mullani came with Biyamma and started residing with the plaintiffs' family on her marriage with Rehman. After few years the plaintiffs' grandfather Rehman had granted some area from the suit property to stay independently and that is how Mohammad, son of Babaji Mullani continued to occupy the same. Mohammad Mullani died and the suit property was taken over by Badsha Mujawar, the father of the plaintiffs and Badsha died in the year 1978. However, during his life time Badsha had allowed the defendant to occupy the suit property sometimes in 1972 onwards and in 1981 when the plaintiffs demanded the restoration to them, the defendant refused to do so and consequently the ejectment notice dated 26/4/1981 was issued. The defendant filed written statement at Exhibit 19 and opposed the suit on the grounds that the suit property was purchased by him vide registered sale deed at Exhibit 46 dated 10/4/1961. In the alternative he claimed that even as per the admissions of the plaintiffs he was in

authorised possession of the suit property and thus had become an owner by adverse possession.

2A. On behalf of the plaintiffs, the plaintiff no.1 Hasan was examined as PW 1 and Vajeer, who is a neighbour was examined as PW 2. The defendant examined himself as DW 1 and two more witnesses i.e. Babalal Bandu Patil DW 2 and Rajaram Lohar DW 3. There is no doubt that the evidence of the defendant proved the sale deed at Exhibit 46 but that by itself was not sufficient to prove his ownership title to the suit premises. It was the case of the plaintiffs that Mohammad, son of Babaji Mullani was not the son of their grandfather Rehman and was in fact the son of late Babaji Mullani, the first husband of Biyamma who was subsequently married to the plaintiffs' grandfather. Under these circumstances, it was necessary for the defendant to prove that Mohammad, son of Babaji Mullani, who was the vendor of the defendant was the owner of the suit property and his mere occupation over the same would not make him the owner. The two independent witnesses examined by the defendant were the attesting witnesses of the sale deed registered and marked as Exhibit 46 and they did not have any knowledge regarding the title of late Mohammad Mullani over the suit property. Though the

plaintiffs contended that Mullani died in 1960 but there does not appear to be acceptable evidence in this regard more so when it was sought to be placed before the trial Court through the evidence of DW 2 and DW 3 that Mohammad was murdered and a sessions case in regard to the same was pending before the Court at Sangli. On analysing the evidence of all the witnesses and also the documents placed on record and exhibited, both the Courts below have held that late Mohammad, son of Babaji Mullani had no legal title to the suit property and, therefore, the defendant could not be termed as the owner of the suit property. This concurrent finding does not suffer from any infirmities and, therefore, the first issue framed as the substantial question of law stands rejected.

3. Coming to the contentions of the defendant that he became owner of the suit property by adverse possession, the documents did not support it. He relied upon the documents at Exhibits 33 to 39. The document at Exhibit 33 was the extract from the village panchayat record for the years 1967-68 to 1971-72 and the defendant was shown to be the owner of the suit property. However, the village extracts

at Exhibits 31 and 32 belied the defendant's contentions. At Exhibit 25 the village extract showed that the defendant was the owner in the year 1972 to 1976. The plaintiffs had admitted that in the year 1972 the defendant was put in possession of the suit premises as a licensee by their father Badsha and on the demise of Badsha they had demanded the return of the property which was declined by the defendant.

4. The document at Exhibit 25 is in respect of house no.485/448 whereas the document at Exhibit 32 is in respect of village panchayat house no.530. The document at Exhibit 33 is in respect of the suit house i.e. village panchayat house no.355/ 1/2 but the document at Exhibit 28, which is in respect of the suit house shows its owner as Gori Allibhai Mujawar who was the great grandfather of the plaintiffs and this document pertains to the period from 1952-55 to 1961-62. Similarly the documents at Exhibits 29 and 30 pertaining to the suit house are in the name of the plaintiffs' father Shri Badsha Rehman Mujawar. The receipts at Exhibits 34 to 39 issued by the village panchayat Hatkanangale do not per se support the claim that the defendant was in

adverse possession of the suit house unless the possession has come through a legal title i.e. the person who has handed over the possession had a legal title to the property and it is not sufficient that the act of possession alone would support such claim. The possession must be adverse in continuity to the owner and, therefore, though the defendant was in possession of the suit house for more than 12 years, there is nothing on record to show that he came in possession by denying the title of the plaintiffs and through the owner of the suit property. The trial Court, therefore, rightly noted that the evidence placed on record by the plaintiffs did prove that the possession of the plaintiffs was permissive possession which could not be said to be adverse and that he was in fact the plaintiffs' licensee who could not acquire right of ownership from the licensor. It is true that Babalal Patil (DW 2) and Rajaram Lohar (DW 3) stated that the defendant was in possession of the suit house for the last 20 years or so but at the same time they were not aware whether the plaintiff was in possession through a right title and on the other hand the evidence of the plaintiffs went to show that the defendant came in possession of the suit property with the permission of their

father. When the city survey was taken in the year 1967, the defendant's name did not find place in the city survey enquiry register as being in possession of the suit house and this is evident from the notices addressed to the plaintiffs' father in the year 1967.

5. On the face of the evidence placed on record, undoubtedly both the Courts below were right in rejecting the claim of the defendant that he became owner by adverse possession of the suit house and, therefore, the second substantial question of law as framed stands answered against the defendant.

6. In the premises the Second Appeal fails and the same is hereby dismissed but without any order as to costs.

(B.H. MARLAPALLE,J.)